

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17376 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

CHUNIYO LAGJI CHHARA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 17376 of 2003
MR HR PRAJAPATI for Petitioner No. 1
MR MR PRAJAPATI for Petitioner No. 1
MS MITA S PANCHAL AGP for Respondent No. 1-3
RULE SERVED for Respondent No. 1-2
-

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 05/05/2004

ORAL JUDGEMENT

The petitioner above named has preferred this petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 28/11/03 passed by respondent no.2 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that two F.I.Rs. were registered against him before Prohibition Police Station Northern Division at C.R.No.1958/2003 and 1959/2003 on 17/10/03. The petitioner was arrested for both the offences on 27/11/03. Statements of unnamed witnesses were recorded on 25/11/03 and they were verified on 27/11/03. Thereafter, the order of detention was passed on 28/11/03.

3. Feeling aggrieved by the said order of his detention, the petitioner has preferred this petition before this Court. It has been contended here that simply because a couple of offences have been registered against the petitioner, the petitioner could not be treated to be a "bootlegger" and that his activities were not likely to cause a threat to public order. It has also been contended that the names of the witnesses were not disclosed to the petitioner, and therefore, a valuable right of the petitioner to make an effective representation against his detention has been denied. That, therefore, the order of detention is illegal and hence, it may be quashed and set aside.

4. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.Mita S Panchal learned AGP has appeared on behalf of the respondents. The learned AGP produces affidavit of the detaining authority. It is taken on record. I have heard the learned advocates for the parties and have perused the papers.

5. The learned advocate for the petitioner has contended that simply because a couple of prohibition offences have been registered against the petitioner, the petitioner could not be treated to be a "bootlegger" whose activities would stage a threat to public order. In this connection, the learned advocate for the petitioner has relied upon a decision of the Hon'ble the Apex Court in the case of Piyush Kantilal Mehta V/s. Commissioner of Police, Ahmedabad City reported in A.I.R. 1989 SC 491. Para 17 and 18 of the said decision are relevant, which are reproduced from ready reference as follows;

Para 17 : "Does the expression 'public order'

take in every kind of infraction of order or only some categories thereof? It is manifest that every act of assault or injury to specific persons does not lead to public disorder. When two people quarrel and fight and assault each other inside a house or in a street, it may be said that there is disorder but not public disorder. Such cases are dealt with under the powers vested in the executive authorities under the provisions of ordinary criminal law but the culprits cannot be detained on the ground that they were disturbing public order. The contravention of any law always affects order but before it can be said to affect public order, it must affect the community or the public at large. In this connection we must draw a line of demarcation between serious and aggravated forms of disorder which directly affect the community or injure the public interest and the relatively minor breaches of peace of a purely local significance which primarily injure specific individual and only in a secondary sense public interest. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Preventive Detention Act but a disturbance which will affect public order comes within the scope of the Act."

Para 18 : In the instant case, the detaining authority, in our opinion, has failed to substantiate that the alleged antisocial activities of the petitioner adversely affect or are likely to affect adversely the maintenance of public order. It is true some incidents of beating by the petitioner had taken place, as alleged by the witnesses. But, such incidents, in our view, do not have any bearing on the maintenance of public order. The petitioner may be punished for the alleged offences committed by him but, surely, the acts constituting the offences cannot be said to have affected the even tempo of the life of the community. It may be that the petitioner is a bootlegger within the meaning of S.2(b) of the Act, but merely because he is a bootlegger he cannot be preventively detained under the provisions of the Act unless, as laid down in subsection (4) of S.3 of the Act, his activities as a bootlegger affect adversely or are likely to affect adversely the maintenance

of public order. We have carefully considered the offences alleged against the petitioner in the order of detention and also the allegations made by the witnesses and, in our opinion, these offences or the allegations cannot be said to have created any feeling of insecurity or panic or terror among the members of the public of the area in question given rise to the question of maintenance of public order. The order of detention cannot, therefore, be upheld."

6. On the strength of the above decision, it would be difficult to hold that the petitioner's activities were such so as to stage a threat to public order.

7. So far the statements of witnesses are concerned, it is true that the names of the witnesses have not been disclosed to the petitioner by claiming power of privilege u/s.9(2) of the said Act. In order to appreciate the said position, a decision in the case of Ranubhai B. Bharwad V/s. State of Gujarat reported in 2000 (3) GLR 2696 would be relevant. Relevant observations from page 2697 and 2698 may be reproduced for ready reference as follows;

"The statements of the three witnesses in the instant case which were recorded before the Police Inspector on 17/08/99, 21/08/99 and 25/08/99 with regard to the incidents dated 10/07/99, 13/06/99 and 26/06/99 were the material along with the proposal which is said to have been made on 27/08/99 and it is clear from the record that it was on 29/08/99 that the detaining authority has recorded its verification of all these three statements. There is nothing on record to show that the detaining authority had considered the proposal dated 27/08/99 at any time prior to 29/08/99 and on 29/08/99, all that has been done is that the concerned witnesses have stated before the detaining authority that the statements as had been made on the respective dates were correct and immediately thereafter on the following day, i.e. on 30/08/99 the detention order has been passed." (Para 9)

"The manner in which the verification has been recorded of the statements made by these three witnesses for the purpose of S.9(2) shows that the same has been done only as an empty formality inasmuch as the same witnesses had been called before the detaining authority and the

detaining authority had recorded that whatever the statements made by the witnesses were correct. Thus, the whole exercise appears to have been done as a mechanical exercise and it is not borne out that there is an active application of mind on this aspect of the matter by the detaining authority for the purpose of verification of the facts as had been disclosed by the witnesses so as to express the fear and to invoke the privilege u/s.9(2) against the disclosure of the names and addresses of the witnesses and it thus appears on the basis of the ratio of the decision of the Division Bench that it is a case of wrong exercise of power u/s.9(2) and it is established that in such cases, the wrong exercise of power u/s.9(2) adversely affects the detenu's right of making an effective representation guaranteed under Article 22(5) of the Constitution of India." (Para 9)

"Once the materials are placed before the detaining authority with the proposal by the sponsoring authority it must have reasonably sufficient time for the purpose of verification of the facts and the consideration of the entire material with an active application of mind and the order has to be passed at the earliest opportunity, but in this process to strike the balance between the public interest and the right of the detenu either of the two should not be defeated in any manner and the whole process must indicate that the detaining authority had applied its mind with the requisite approach and it had also devoted sufficient time before arriving at the decision to claim the privilege u/s.9(2) of the Act and also to come to the conclusion that the detenu was required to be detained immediately. In the facts of the present case, I find that this requirement of maintaining the balance has been defeated and the detention order has been passed on 30/08/99, i.e. on the next day to the date on which the materials were considered by the detaining authority." (Para 9)

8. In the present case also, in view of the aforesaid position, it can be said that the petitioner was deprived of making an effective representation, by not disclosing the names of the witnesses, whose statements were considered by the detaining authority. Hence, the further continuance of the detention of the detenu is illegal and the detenu is required to be

released from detention. This can be done by quashing the impugned order of detention.

9. For the foregoing reasons, this petition is allowed. The impugned order of detention dated 28/11/03 passed by respondent no.2 against the petitioner, is ordered to be quashed and set aside. Detenu, Chuniyo Lagji Chhara, is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(D. P. Buch, J.)

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